

No. 11150

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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EUGENE E. RITCH and A. W. HALL,  
Appellants,  
vs.

PUGET SOUND BRIDGE & DREDGING CO.,  
INC., a corporation, JOHN A. RUMSEY, a  
sole trader doing business as Rumsey & Co.,  
together doing business as Rumsey Puget  
Sound, a copartnership,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Western District of Washington,  
Northern Division

FILED

NOV 27 1945

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL:

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1012 U. S. Court House

Seattle, Washington [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the Western  
District of Washington, Northern Division.

No. 970

EUGENE E. RITCH and A. W. HALL,  
Plaintiffs,  
vs.

PUGET SOUND BRIDGE & DREDGING CO.  
INC., a Corporation, and JOHN A. RUMSEY,  
a sole trader doing business as RUMSEY &  
CO., together doing business as RUMSEY  
PUGET SOUND, a co-partnership,  
Defendants.

### COMPLAINT

Come now the plaintiffs and for cause of action  
against the defendants allege as follows:

#### I.

That at all times herein mentioned, the defendant  
Puget Sound Bridge & Dredging Co., Inc., was  
and now is a corporation organized and doing busi-  
ness under the laws of the State of Washington,  
and the defendant John A. Rumsey was and now  
is a sole trader doing business as Rumsey & Co.,  
and that said corporation and said sole trader have  
been and are doing business as a copartnership  
under the name of Rumsey Puget Sound, engaged  
in constructing Pier No. 3 at the Puget Sound  
Navy Yard, Bremerton, Washington, under con-  
tract with the United States Navy Department.



II.

That in the months of January to August, 1942, the defendants employed John C. Earles as a warehouse clerk in the regular course of said construction work upon said Pier No. 3. That his duties were the receiving and checking and otherwise handling [2] of intra-state and inter-state shipments of materials, storing the same in the warehouse and routing them to final disposition.

III.

That at all times herein mentioned there was and now is in full force and effect an Act of the Congress of the United States known as the Fair Labor Standards Act of 1938, which provides for the payment of overtime pay at the rate of time and one-half for all time worked in excess of forty hours in any one week, to be paid to workers engaged in inter-state commerce or in the production of goods for commerce between the states or from any state to any place outside thereof.

IV.

That at all times herein mentioned, the said John C. Earles, employed as a warehouse clerk as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for

overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said John C. Earles in the sum of \$121.10, no part of which has been paid, although due demand has been made therefor.

## V.

That said Fair Labor Standards Act of 1938 further provides, in Section 16 (b) thereof, that any employer who so violates the provisions of said Act shall be liable to any employee affected in the amount of the unpaid overtime compensation and in an additional equal amount as liquidated damages, and shall be liable for a reasonable attorney's fee and costs of the [3] action. That the sum of \$100.00 is a reasonable attorney's fee on said claimant's cause of action.

## VI.

That the said John C. Earles has in writing assigned his said cause of action to the plaintiffs herein.

And for a Second Cause of Action against the defendants, plaintiffs complain and allege as follows:

## I.

Repeat and re-allege as though fully set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

II.

That between the dates of January 12, 1941 and May 1, 1942, the defendants employed A. W. Hall as an office draftsman and engineer, designing and detailing railroad systems, shipways and piping systems for said Pier 3 and supervising other office draftsmen in similar work, likewise frequently checking in special materials for the material man, all in the regular course of the construction work upon said pier.

III.

That at all times herein mentioned, the said A. W. Hall, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said A. W. Hall in the sum [4] of \$407.32, no part of which has been paid although due demand has been made therefor.

IV.

That the sum of \$350.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

## V.

That the said A. W. Hall has in writing assigned his said cause of action to the plaintiffs herein.

And for a Third Cause of Action against the defendants, plaintiffs complain and allege as follows:

## I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

## II.

That between the dates of August 5, 1941 and July 6, 1943, the defendants employed John W. Jameson as head timekeeper, checking time and figuring weekly pay of employees engaged in inter-state commerce or in the production of goods for inter-state commerce and likewise hiring employees through their different unions, all in the regular course of the construction work upon said pier.

## III.

That at all times herein mentioned, the said John W. Jameson, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for his overtime [5]

work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said John W. Jameson in the sum of \$882.37, no part of which has been paid although due demand has been made therefor.

IV.

700.00

That the sum of \$350.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

V.

That the said John W. Jameson has in writing assigned his said cause of action to the plaintiffs herein.

And for a Fourth Cause of Action against the defendants, plaintiffs complain and allege as follows:

I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

II.

That between the dates of January 2, 1942 and May 31, 1943, the defendants employed Ralph O. Lund as an office draftsman, designing and detailing facilities for two buildings and the Personnel Shelter and assisting with final plans on all projects in the regular course of the construction work upon said Pier No. 3.

## III.

That at all times herein mentioned, the said Ralph O. Lund, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked [6] a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said Ralph O. Lund in the sum of \$483.99, no part of which has been paid although due demand has been made therefor.

## IV.

That the sum of \$400.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

## V.

That the said Ralph O. Lund has in writing assigned his said cause of action to the plaintiffs herein.

And for a Fifth Cause of Action against the defendants, plaintiffs complain and allege as follows:

## I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause



of action and all except the last sentence of paragraph V thereof.

## II.

That between the dates of May 11, 1941 and April 13, 1943, the defendants employed Henry I. Mayer as a timekeeper, engaged in checking time and figuring payrolls of employees who handled materials shipped in intra-state and inter-state commerce.

## III.

That at all times herein mentioned, the said Henry I. Mayer, employed as aforesaid was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked [7] a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said Henry I. Mayer in the sum of \$978.49, no part of which has been paid although due demand has been made therefor.

## IV.

That the sum of \$750.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

## V.

That the said Henry I. Mayer has in writing assigned his said cause of action to the plaintiffs herein.

And for a Sixth Cause of Action against the defendants, plaintiffs complain and allege as follows:

## I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

## II.

That between the dates of July 13, 1941 and March 30, 1943, the defendants employed Paul Mehner as an office draftsman, detailing plans for railroads, piping facilities and shipways for said Pier 3, all in the course of the construction work upon said pier.

## III.

That at all times herein mentioned, the said Paul Mehner, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the [8] terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and



by reason thereof the defendants became indebted to the said Paul Mehner in the sum of \$486.60, no part of which has been paid although due demand has been made therefor.

IV.

That the sum of \$400.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

V.

That the said Paul Mehner has in writing assigned his said cause of action to the plaintiffs herein.

And for a Seventh Cause of Action against the defendants, plaintiffs complain and allege as follows:

I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

II.

That between the dates of April 29, 1942 and June 1, 1943, the defendants employed Esther O. Owens as a clerk-stenographer, her duties consisting of typing up purchase orders and checking invoices on materials purchased and shipped in intra-state and inter-state commerce for use in the regular course of the construction work upon said Pier No. 3.

III.

That at all times herein mentioned, the said

Esther O. Owens, employed as aforesaid, was engaged in inter-state commerce [9] or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms of said Act, and that she regularly worked a total of forty-eight hours weekly or more, but that her employers, the defendants, compensated her for her overtime work at a rate which was less than one and one-half times the regular rate at which she was employed, and by reason thereof the defendants became indebted to the said Esther O. Owens in the sum of \$149.73, no part of which has been paid although due demand has been made therefor.

#### IV.

That the said sum of \$120.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

#### V.

That the said Esther O. Owens has in writing assigned her said cause of action to the plaintiffs herein.

And for An Eighth Cause of Action against the defendants, plaintiffs complain and allege as follows:

#### I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

II.

That between the dates of August 19, 1941 and May 31, 1943, the defendants employed Eugene E. Ritch as a material man, whose duties were the issuance of purchase orders and the checking in of materials purchased and shipped in both intra-state and interstate commerce under the supervision of the superintendent and resident engineer in charge of the construction work upon said Pier No. 3 and in the regular course of such construction work.

III.

That at all times herein mentioned, the said Eugene E. Ritch, employed as aforesaid, was engaged in inter-state commerce [10] or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more, but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said Eugene E. Ritch in the sum of \$662.20.

V.

That the sum of \$550.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

## VI.

That the said Eugene E. Ritch has in writing assigned his said cause of action to the plaintiffs herein.

And for a Ninth Cause of Action against the defendants, plaintiffs complain and allege as follows:

## I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of Paragraph V thereof.

## II.

That between the dates of June 1, 1942 and December 31, 1943, the defendants employed James P. Ritch as a warehouse clerk, receiving, checking, storing and routing materials shipped in intra-state and inter-state commerce for use in the regular course of the construction work upon said Pier No. 3.

## III.

That at all times herein mentioned, the said James P. Ritch, employed as aforesaid, was engaged in inter-state commerce [11] or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-

half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said James P. Ritch in the sum of \$75.00, no part of which has been paid although duly demanded.

V.

That the sum of \$70.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

VI.

That the said James P. Ritch has in writing assigned his said cause of action to the plaintiffs herein.

And for a Tenth Cause of Action against the defendants, plaintiffs complain and allege as follows:

I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

II.

That between the dates of December 1, 1940 and August 31, 1943, the defendants employed Effie M. Robinson as a bookkeeper, making all payroll checks, auditing all invoices, putting all invoices through for payment, keeping all necessary book-keeping records in connection with the contract for and the execution of the construction of said Pier No. 3, the said invoices covering materials shipped in inter-state and intra-state commerce, and the



said payroll checks being made to employees engaged in both intra-state and inter-state commerce.

### III.

That at all times herein mentioned, the said Effie M. Robinson, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that she regularly worked a total of forty-eight hours weekly or more but that her employers, the said defendants, compensated her for her overtime work at a rate which was less than one and one-half times the regular rate at which she was employed, and by reason thereof the defendants became indebted to the said Effie M. Robinson in the sum of \$257.49, no part of which has been paid although due demand has been made therefor.

### IV.

That the sum of \$210.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

### V.

That the said Effie M. Robinson has in writing assigned her said cause of action to the plaintiffs herein.

And for An Eleventh Cause of Action against the defendants, plaintiffs complain and allege as follows:

I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

II.

That between the dates of April 19, 1942 and May 18, 1943, the defendants employed William J. Sheffield as an assistant timekeeper, checking time and figuring payroll of employees who handled materials shipped and received in intra-state and inter-state [13] commerce and also receiving and checking in certain materials received in such commerce in the regular course of the construction work upon said Pier No. 3.

III.

That at all times herein mentioned, the said William J. Sheffield, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms of said Act, and that he regularly worked a total of forty-eight hours or more weekly, but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof the defendants became indebted to the said William J. Sheffield in the sum of \$289.54, no part of which has been paid although due demand has been made therefor.

## IV.

That the sum of \$250.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

## V.

That the said William J. Sheffield has in writing assigned his said cause of action to the plaintiffs herein.

And for a Twelfth Cause of Action against the defendants, plaintiffs complain and allege as follows:

## I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof.

## II.

That between the dates of April 22, 1941 and May 18, 1943, the defendants employed Glenn E. Tyler as a field engineer [14] and draftsman engaged in drafting and detailing the plans for Pier No. 3 and shipway facilities and in installation of railroad systems and shipways on and about said pier in the regular course of the construction thereof.

## III.

That at all times herein mentioned, the said Glenn E. Tyler, employed as aforesaid, was engaged in inter-state commerce or in the production of goods for commerce between the state or from the State of Washington to places outside thereof



under the terms and definitions of said Act, and he regularly worked a total of forty-eight hours weekly or more but that his employers, the said defendants, compensated him for his overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof, the defendants became indebted to the said Glenn E. Tyler in the sum of \$561.41, no part of which has been paid although due demand has been made therefor.

IV.

That the sum of \$450.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

V.

That the said Glenn E. Tyler has in writing assigned his said cause of action to the plaintiffs herein.

And for a Thirteenth Cause of Action, plaintiffs complain and allege as follows:

I.

Repeat and re-allege as fully as though set forth herein paragraphs I and III of their first cause of action and all except the last sentence of paragraph V thereof. [15]

II.

That between the dates of April 6, 1941 and May 22, 1942, the defendants employed A. W. Torn as an office draftsman, designing and detailing facili-

ties for Pier No. 3 and its shipways and drawing layout and detail of its railroad and piping systems, all in the regular course of the construction of said pier.

### III.

That at all times herein mentioned the said A. W. Torn, employed as aforesaid, was engaged in interstate commerce or in the production of goods for commerce between the states or from the State of Washington to places outside thereof under the terms and definitions of said Act, and that he regularly worked a total of forty-eight hours weekly or more but that his employers, the said defendants, compensated him for his services in overtime work at a rate which was less than one and one-half times the regular rate at which he was employed, and by reason thereof, the defendants became indebted to the said A. W. Torn in the sum of \$300.51, no part of which has been paid although due demand has been made therefor.

### IV.

That the sum of \$250.00 is a reasonable attorney's fee to be allowed on said claimant's cause of action.

### V.

That the said A. W. Torn has in writing assigned his said cause of action to the plaintiffs herein.

Wherefore, plaintiffs pray for judgment against the defendants, and each of them as follows:

- (1) On their first cause of action for the sum

of \$242.10, together with attorney's fees in the sum of \$100.00 [18]

(2) On their second cause of action in the sum of \$814.64, together with attorney's fees in the sum of \$350.00.

(3) On their third cause of action in the sum of \$1764.74, together with attorney's fees in the sum of \$700.00.

(4) On their fourth cause of action in the sum of \$967.98, together with attorney's fees in the sum of \$400.00.

(5) On their fifth cause of action in the sum of \$1956.98, together with attorney's fees in the sum of \$750.00.

(6) On their sixth cause of action in the sum of \$973.24, together with attorney's fees in the sum of \$400.00.

(7) On their seventh cause of action in the sum of \$299.46, together with attorney's fees in the sum of \$120.00.

(8) On their eighth cause of action in the sum of \$1324.40, together with attorney's fees in the sum of \$550.00.

(9) On their ninth cause of action in the sum of \$150.00, together with attorney's fees in the sum of \$70.00.

(10) On their tenth cause of action in the sum of \$514.98, together with attorney's fees in the sum of \$210.00.

(11) On their eleventh cause of action in the sum of \$579.08, together with attorney's fees in the sum of \$250.00.

(12) On their twelfth cause of action in the sum of \$1122.82, together with attorney's fee of \$450.00.

(13) On their thirteenth cause of action in the sum of \$601.02, together with attorney's fees in the sum of \$250.00.

(14) For plaintiff's costs and disbursements herein to be taxed.

FLORENCE MAYNE

Attorney for Plaintiffs [17]

United States of America,  
State of Washington,  
County of King—ss.

Eugene E. Ritch, being first duly sworn, says: That he is one of the plaintiffs in the above entitled action and is duly authorized to make this verification on behalf of the plaintiffs herein; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

EUGENE E. RITCH

Subscribed and sworn to before me this 13th day of July, 1944.

(Seal)

FLORENCE MAYNE

Notary Public in and for the State of Washington  
residing at Seattle.

[Endorsed]: Filed July 14, 1944. [18]

[Title of District Court and Cause.]

ANSWER

Come now the defendants in the above entitled action by and through their attorney, and in answer to the complaint of the plaintiffs herein, admit, deny and allege as follows:

I.

Defendants admit the allegations contained in paragraph I of plaintiff's First Cause of Action.

II.

Answering paragraph II, defendants admit that John C. Earles was employed as a warehouse clerk in the regular course of construction work on Pier No. 3 at the Puget Sound Navy Yard, Bremerton, Washington; and deny each and every other allegation contained in said paragraph II.

III.

Answering paragraph III, defendants admit that at all times mentioned in the complaint the Act of Congress of the United States known as the Fair Labor Standards Act of 1938 was in full force and effect; and deny each and every other allegation contained in said paragraph III.

IV.

Answering paragraph IV, defendants deny the allegations contained in paragraph IV of the first count of said complaint. [19]

## V.

Answering paragraph V, the defendants deny that the sum of \$50.00 is a reasonable attorney's fee.

## VI.

Answering paragraph VI, the defendants have no knowledge relative to the facts stated therein, and therefore deny the same.

Answering plaintiff's Second Cause of Action:

## I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Second Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

## II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Second Cause of Action.

## III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Second Cause of Action.

## IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Second Cause of Action, and therefore deny the same.

Answering plaintiffs' Third Cause of Action:

## I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Third Cause of Action



save and except as heretofore admitted in paragraph I of the First Cause of Action. [20]

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Third Cause of Action.

III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Third Cause of Action.

IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Third Cause of Action, and therefore deny the same.

Answering plaintiffs' Fourth Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Fourth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Fourth Cause of Action.

III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Fourth Cause of Action.

IV.

Defendants have no knowledge relative to the

facts stated in paragraph V of plaintiffs' Fourth Cause of Action, and therefore deny the same.

Answering plaintiffs' Fifth Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Fifth Cause of Action save and except as [21] heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Fifth Cause of Action.

III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Fifth Cause of Action.

IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Fifth Cause of Action, and therefore deny the same.

Answering plaintiffs' Sixth Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Sixth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Sixth Cause of Action.



III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Sixth Cause of Action.

IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Sixth Cause of Action, and therefore deny the same. [22]

Answering plaintiffs' Seventh Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Seventh Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Seventh Cause of Action.

III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Seventh Cause of Action.

IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Seventh Cause of Action, and therefore deny the same.

Answering plaintiffs' Eighth Cause of Action:

I.

Defendants deny the allegations contained in

paragraph I of plaintiffs' Eighth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

## II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Eighth Cause of Action.

## III.

Defendants deny the allegations contained in paragraphs III and V of plaintiffs' Eighth Cause of Action.

## V.

Defendants have no knowledge relative to the facts stated in paragraph VI of plaintiffs' Eighth Cause of Action, [23] and therefore deny the same.

Answering plaintiffs' Ninth Cause of Action:

## I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Ninth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of action.

## II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Ninth Cause of Action.

## III.

Defendants deny the allegations contained in paragraphs III and V of plaintiffs' Ninth Cause of Action.

## IV.

Defendants have no knowledge relative to the facts stated in paragraph VI of plaintiffs' Ninth Cause of Action, and therefore deny the same.

Answering plaintiffs' Tenth Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Tenth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Tenth Cause of Action.

III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Tenth Cause of Action. [24]

IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Tenth Cause of Action, and therefore deny the same.

Answering plaintiffs' Eleventh Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Eleventh Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Eleventh Cause of Action.

## III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Eleventh Cause of Action.

## IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Eleventh Cause of Action, and therefore deny the same.

Answering plaintiffs' Twelfth Cause of Action:

## I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Twelfth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

## II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Twelfth Cause of Action. [25]

## III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Twelfth Cause of Action.

## IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Twelfth Cause of Action, and therefore deny the same.

Answering plaintiffs' Thirteenth Cause of Action:

I.

Defendants deny the allegations contained in paragraph I of plaintiffs' Thirteenth Cause of Action save and except as heretofore admitted in paragraph I of the First Cause of Action.

II.

Defendants admit the allegations contained in paragraph II of plaintiffs' Thirteenth Cause of Action.

III.

Defendants deny the allegations contained in paragraphs III and IV of plaintiffs' Thirteenth Cause of Action.

IV.

Defendants have no knowledge relative to the facts stated in paragraph V of plaintiffs' Thirteenth Cause of Action, and therefore deny the same.

Wherefore, having fully answered the complaint of the plaintiffs herein, defendants pray that the action be dismissed, and that they may recover their costs herein.

J. CHARLES DENNIS

Attorney for Defendants

Copy received 10-12-44.

FLORENCE MAYNE

Attorney for Plaintiffs

[Endorsed]: Filed Oct. 19, 1944 [26]

[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This Cause coming on regularly for trial in open Court on the 10th day of May, 1945, plaintiffs appearing by their attorney, Florence Mayne, and the defendants appearing by their attorney, J. Charles Dennis, evidence having been introduced and witnesses examined, the Court being fully advised in the premises, now makes the following Findings of Fact:

I.

As to plaintiffs' Second Cause of Action, that A. W. Hall was not engaged in interstate commerce, or in the production of goods for interstate commerce.

II.

As to plaintiffs' Third Cause of Action, that John W. Jameson was not engaged in interstate commerce, or in the production of goods for interstate commerce.

III.

As to plaintiffs' Fourth Cause of Action, that Ralph O. Lund was not engaged in interstate commerce, or in the production of goods for interstate commerce. [27]

IV.

As to plaintiffs' Fifth Cause of Action, that Henry I. Mayer was not engaged in interstate commerce, or in the production of goods for interstate commerce.



V.

As to plaintiffs' Sixth Cause of Action, that Paul Mehner was not engaged in interstate commerce, or in the production of goods for interstate commerce.

VI.

As to plaintiffs' Eleventh Cause of Action, that William J. Sheffield was not engaged in interstate commerce, or in the production of goods for interstate commerce.

VII.

As to plaintiffs' Twelfth Cause of Action, that Glenn E. Tyler was not engaged in interstate commerce, or the production of goods for interstate commerce.

VIII.

As to plaintiffs' Thirteenth Cause of Action, that A. W. Torn was not engaged in interstate commerce, or in the production of goods for interstate commerce.

To all of the foregoing plaintiffs except and their exception is allowed.

Done in open Court this 18th day of May, 1945.

JOHN C. BOWEN

United States District Judge

As Conclusions of Law from the foregoing Findings of Fact, the Court makes the following:

## CONCLUSIONS OF LAW

## I.

That the plaintiffs are not entitled to recover any sums in Causes of Action numbered Second, Third, Fourth, Fifth, Sixth, Eleventh, Twelfth and Thirteenth herein.

Exception allowed plaintiffs.

Done in open Court this 18th day of May, 1945.

JOHN C. BOWEN

United States District Judge

Approved as to form only:

.....

Attorney for Plaintiffs

Presented by:

J. CHARLES DENNIS

Attorney for Defendants

[Endorsed]: Filed May 18, 1945. [28]

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[Title of District Court and Cause.]

## JUDGMENT AS TO CERTAIN CLAIMS

This Cause coming on regularly for hearing in open Court on the 10th day of May, 1945, plaintiffs appearing by their attorney, Florence Mayne, the defendants appearing by their attorney, J. Charles Dennis, and the defendants and the plaintiffs having stipulated that the plaintiffs herein may have judgment in their favor on the First Cause of Action in the sum of \$181.65, said amount to be



in full for overtime due John C. Earles, together with liquidated damages, and the parties having further stipulated that a reasonable attorney's fee should be fixed by the Court and made a part of said judgment;

And the parties having further stipulated as to the Seventh Cause of Action that the plaintiffs have judgment in the sum of \$224.60, said sum to be in full for overtime due Esther O. Owens, together with liquidated damages, and in addition thereto should have judgment for a reasonable attorney's fee, the same to be fixed by the Court;

And the parties having further stipulated as to the Eighth Cause of Action that the plaintiffs have judgment in the sum of \$993.30, said sum to be in full for overtime [29] due Eugene E. Ritch, together with liquidated damages, and for such further sum as the Court should adjudge to be a reasonable attorney's fee;

And the parties having further stipulated as to the Ninth Cause of Action that the plaintiffs have judgment in the sum of \$112.50, said sum to be in full for overtime due James P. Ritch, together with liquidated damages, and for such further sum as the Court should adjudge to be a reasonable attorney's fee;

And the parties having further stipulated as to the Tenth Cause of Action that the plaintiffs have judgment in the sum of \$386.24, said sum to be in full for overtime due Effie M. Robinson, together with liquidated damages, and for such further sum

as the Court should adjudge to be a reasonable attorney's fee; now therefore, it is hereby

Ordered, Adjudged and Decreed that in accordance with the above stipulation as to said causes of action——

I.

That the plaintiffs herein, as assignees of John C. Earles, do have and recover judgment in their favor and against the defendants in the sum of \$181.65, together with the sum of \$50.00 as attorney's fee.

II.

That the plaintiffs herein, as assignees of Esther O. Owens, do have and recover judgment in their favor and against the defendants in the sum of \$224.60, together with the sum of \$50.00 as attorney's fee.

III.

That the plaintiffs herein, as assignees of Eugene E. Ritch, do have and recover judgment in their favor and against the defendants in the sum of \$993.30, together with the sum of \$175.00 as attorney's fee. [30]

IV.

That the plaintiffs herein, as assignees of James P. Ritch, do have and recover judgment in their favor and against the defendants in the sum of \$112.50, together with the sum of \$50.00 as attorney's fee.

V.

That the plaintiffs herein, as assignees of Effie M. Robinson, do have and recover judgment in

their favor and against the defendants in the sum of \$386.24, together with the sum of \$75.00 as attorney's fee.

It is Further Ordered, Adjudged and Decreed that the plaintiffs do have and recover judgment against the defendants for their costs of this action to be taxed by the Clerk of the Court.

This judgment terminates the above entitled action with respect to the First Cause of Action, the Seventh Cause of Action, the Eighth Cause of Action, the Ninth Cause of Action and the Tenth Cause of Action, solely.

Done in Open Court this 14th day of May, 1945.

JOHN C. BOWEN

United States District Judge.

Approved:

FLORENCE MAYNE

Attorney for Plaintiffs

Approved:

J. CHARLES DENNIS

Attorney for Defendants

Presented by:

J. CHARLES DENNIS

[Endorsed]: May 18, 1945. [31]

United States District Court  
Western District of Washington  
Northern Division

No. 970

EUGENE E. RITCH and A. W. HALL,  
Plaintiffs,

vs.

PUGET SOUND BRIDGE & DREDGING CO.,  
INC., a corporation, and JOHN A. RUMSEY,  
a sole trader doing business as RUMSEY &  
CO., together doing business as RUMSEY  
PUGET SOUND, a co-partnership,  
Defendants.

JUDGMENT

This Cause coming on regularly in open Court on the 10th day of May, 1945, plaintiffs being represented by Florence Mayne, their attorney, and the defendants being represented by J. Charles Dennis, their attorney, a trial having been held on the merits, findings of fact and conclusions of law having been duly signed by the Court and filed with the Clerk of the above entitled Court, now therefore, it is hereby

Ordered, Adjudged and Decreed that the plaintiffs herein recover nothing on their Second Cause of Action, the Third Cause of Action, the Fourth Cause of Action, the Fifth Cause of Action, the Sixth Cause of Action, the Eleventh Cause of Action, the Twelfth Cause of Action and the Thir-

teenth Cause of Action, and as to each of those causes of action that the case be, and the same is hereby dismissed. Exception allowed plaintiffs.

Done in Open Court this 18th day of May, 1945.

JOHN C. BOWEN

United States District Judge

Approved as to form only:

.....

Attorney for Plaintiffs.

Presented by:

J. CHARLES DENNIS

Attorney for Defendants.

[Endorsed]: Filed May 18, 1945. [32]

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[Title of District Court and Cause.]

### COURT'S DECISION

Florence Mayne, Seattle, Washington, Attorney for Plaintiffs.

W. E. Evenson: Skeel, McKelvy, Henke, Evenson & Ullman; Robert F. Sandall, Seattle, Washington, and

J. Charles Dennis, U. S. Attorney; Herbert O'Hare, Assistant U. S. Attorney, Seattle, Washington, Attorneys for Defendants.

Bowen, District Judge:

Both sides have most exhaustively presented this matter to the Court, both on the facts and the law.

Doubtless the fact is well appreciated by all that the Congress has power to deal with this subject only in so far as it relates to interstate commerce. In enacting the Fair Labor Standards Act, under which this action was brought, Congress was exercising that power given to it under the Commerce Clause of the Constitution to regulate inter-state commerce; and unless plaintiffs' work and that of their assignors affected interstate commerce, their claims [33] for overtime work against defendant are not protected by the Fair Labor Standards Act.

So the right of these plaintiffs, and their assignors involves the inquiry whether the new Navy dock structures they were constructing were to be instruments of commerce and whether or not any materials they were handling were handled by them as a part of the movement of those materials in interstate commerce.

Judge Goddard's decision in the case of Joseph A. Brue et al vs. J. Rich Steers, Inc., et al., decided recently in the Southern District of New York is in its facts almost on all fours with the facts in the case at bar. Judge Goddard in that case has very carefully reasoned the matter out and stated the principles and law applicable to the situation, and I am unable to find any fault with anything he has said.

It is, of course, possible that the law as we now know it might later be changed. Congress might possibly declare more certainly an intention to make the Fair Labor Standards Act apply to such work as these employees were doing. Or conceiv-



ably the United States Supreme Court might change its view of the nature of the instrumentality being here built so as to include it in interstate commerce instrumentalities or so as to include as interstate commerce the services which these plaintiffs were performing in connection with the materials in question; but so far the Congress and the Supreme Court have taken no such action, and this Court at this time has to act in the light of the congressional and judicial authority now known to us.

I am convinced that the dock and dock structures which were being built by these plaintiffs as employees of the defendant were not instrumentalities of commerce, that [34] they were intended only to be a Navy dock for the exclusive use of the United States Navy, and that such dock was not intended to be used by all commercial vessels which might wish to do so in the ordinary course of trade and commerce.

I entertain no doubt that the dock was not to be an instrumentality of commerce. I am convinced that the work done by the plaintiffs and their assignors in connection with the materials which had previously moved in interstate commerce, all of which was done only after the materials came to rest on the premises of the Navy Department in Bremerton, after the materials had completed their movement in interstate commerce, does not affect, relate to, or constitute a part of, the movement in commerce of those materials. It is clear that these plaintiffs did nothing that had any causal connection with, or in any way affected, or related to,

the movement in commerce of these materials. It is true that in certain ways they interested themselves in the materials. Some of the plaintiffs kept track of the materials to see where they went when they were put into the structures that were being built as a part of the dock. One of the plaintiffs or assignors kept a progress map showing the final disposition of the material in the course of construction, and there were various services on the construction work done by various assignors with respect to those materials; but such work as was done by the plaintiff's assignors had no relation to and did not affect the movement of these materials in interstate commerce.

I am not aware of any present judicial authority which upon facts like these here upholds the plaintiffs' claims under the Fair Labor Standards Act, and the announced opinions of the Administrative Office of the Fair Labor Standards Act are against plaintiffs' contentions. The [35] Congress has not expressly provided that the work that these men were doing shall be covered by the Act.

I think the case of *Walling vs. Patton-Tully Transportation Co.*, 134 Fed. 2d 945, is not in point because there it was clear that the facilities which were being constructed were facilities in aid of navigation and commerce along two navigable rivers upon which was hauled much of the nation's general interstate commerce. The facilities there being constructed by the employees claiming the protection of the Act were intended to directly aid the movement of interstate commerce; whereas, as I

have previously observed, in the case at bar the dock structures were for the exclusive use of the United States Navy. They were not for general commerce or for any commerce except the use of the Navy.

There is no judicial precedent and there is no rational basis, sound in law, on which the Court could sustain the contention of the plaintiffs and their assignors in this case.

The question of uniformity among all these employees is, however, a very important thing, and if I had any doubt in the matter as to the legal right of the plaintiffs and their assignors to maintain this action, it certainly would be resolved in favor of them, because I feel all employees, irrespective of union membership or kind of work, whether manual, clerical or professional work, should be treated alike as far as this Act is concerned. I believe the question of uniformity in dealing with the employees in this kind of a case is a matter properly to be considered by the Court, and the Court has considered it, and I emphasize that if I felt that there was any doubt as to the facts or applicable legal principles, that doubt would certainly by the Court be resolved in favor of these plaintiffs and their assignors.

[Endorsed]: May 14, 1945. [36]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Eugene E. Ritch and A. W. Hall, plaintiffs above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 18th day of May, 1945, with reference to the plaintiffs' second, third, fourth, fifth, sixth, eleventh, twelfth and thirteenth causes of action, dismissing the same.

**FLORENCE MAYNE**

Attorney for Plaintiffs

[Endorsed]: Aug. 14, 1945. [37]

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[Title of District Court and Cause.]

### PRAECIPE AND DESIGNATION OF PORTIONS OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

The above named plaintiffs do hereby designate the following portions of the record and proceedings in the above entitled cause for inclusion in the record on appeal to the Ninth Circuit Court of Appeals, and request the Clerk to prepare and transmit the same within the time required by law:

1. Complaint (As amended in Open Court)
2. Answer
3. Findings of Fact and Conclusions of Law

4. Judgment
5. Court's Oral Decision
6. Notice of Appeal with Date of Filing
7. This Designation of Portions of Record
8. Statement of Points by Appellant
9. Agreed Statement of Facts

FLORENCE MAYNE

Attorney for Plaintiffs

Copy received 8-29-45.

J. CHARLES DENNIS,

Atty. for Defts.

[Endorsed]: Aug. 29, 1945. [38]

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[Title of District Court and Cause.]

APPELLANTS' STATEMENT OF POINTS ON  
APPEAL

The points involved in this appeal are questions of law which will be readily apparent from perusal of the agreed statement of facts.

(1) Were the appellants, timekeepers and draftsmen employed by the respondents under a construction contract with the United States Navy Department for the building of a new pier and dry dock at the Puget Sound Navy Yard, together with some other construction and repair work, engaged in inter-state commerce within the meaning of the Fair Labor Standards Act, either



(a) Because they were working upon an instrumentality of commerce, or,

(b) Because they estimated, checked, handled or in some manner worked upon or with materials purchased and transported from outside the State of Washington?

(2) Were two of the timekeepers, William Sheffield and Henry I. Mayer, in any more favored position than the other six claimants, so far as recovery is concerned, by reason of the fact that they actually, as a part of their duties, received and checked [39] in merchandise arriving on the project from outside the State of Washington?

(3) Was one of the draftsmen, A. W. Hall, even though he might be held to have been engaged in interstate commerce, excluded from the benefits of the Act because he fell under the exception of being engaged in a bona fide executive, administrative or professional capacity? The trial Court did not decide this point because he dismissed the plaintiffs' complaint upon the broader ground that none of the claimants was engaged in interstate commerce.

With reference to the above stated points, it is the contention of the appellants that the Court erred in applying the law to the facts, which were never greatly in dispute, and that the Court interpreted too narrowly the phrase, "engaged in commerce or in the production of goods for commerce," as



used in the Fair Labor Standards Act and interpreted by the Federal Courts.

FLORENCE MAYNE

Attorney for Appellants

Copy received 8-29-45.

J. CHARLES DENNIS

Atty. for Defts.

[Endorsed]: Aug. 29, 1945. [40]

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[Title of District Court and Cause.]

AGREED STATEMENT OF FACTS ON AP-  
PEAL TO THE CIRCUIT COURT OF AP-  
PEALS, NINTH CIRCUIT

It Is Hereby Stipulated and Agreed by and between the parties above named, through their respective counsel, that the following is a full and true summary of the evidence adduced at the trial of the above entitled cause and shall constitute the Statement of Facts on the appeal of the plaintiffs as appellants to the Circuit Court of Appeals, Ninth Circuit, from the Decision, Findings of Fact, Conclusions of Law and Judgment of the Trial Court:

During all the period of time covered by the appellants' complaint, the respondents were engaged in certain new and additional construction work for the United States Navy Department at the Puget Sound Navy Yard in Bremerton, Washington, under Navy Fixed-Fee Cost-Plus Contract No. NOY4446.

The principal part of the construction work was Pier No. 3, a new, permanent, reinforced-concrete repair pier for naval vessels, complete with railroad and crane tracks, tied in with the Navy Yard railroad system and connected with the commercial car landing of the City of Bremerton. At the time of this [41] contract, the City of Bremerton was not served by a commercial railroad except by barges carrying railroad cars across Puget Sound. Tracks were completed on the pier while the job was in progress and ordinary railroad cars of common carriers were used on the tracks to unload materials. The pier under construction was to have oil, water, steam, air and dredging services, the dredging for the purpose of deepening the berths alongside the pier.

Other new construction under the contract included a pumpwell for Dry Dock No. 5, shipways for the building of steel ships and barges, bomb shelter tunnels, bomb proofing for Dry Dock No. 5, a five-acre revetment and fill reclaiming tide lands, with quay wall, and a tool shop with toilet facilities. Additions were an extension to Building 457 and an extension to the existing East End Quay Wall. The only repairs to existing structures were repairs to the pier of the Naval Torpedo Station at Keyport, Washington, a few miles away from the Navy Yard.

All these facilities were intended for the exclusive use of the United States Navy. The only evidence as to the intended use of the new pier itself was the testimony of the Government's witness, Mr. E. C. Jack, who stated that it was not intended to be used as a commercial freight pier, but rather for moor-

ing combat ships undergoing overhaul, commercial freight for use of the United States Government being routed to another pier in the Yard.

The entire project is located on the shores of Puget Sound, a large, navigable body of water extensively used in interstate commerce. The two piers protrude into the waters of the Sound and other construction such as the building of the revetment and fill, the two quay walls, and the deepening of the berths through dredging actually took place in such waters. The Puget Sound Navy Yard is one of the major building and repair yards of [42] the United States Navy.

The construction under the contract was a \$6,000,000 project. Approximately four per cent of the materials used were ordered and received from outside the State of Washington. Most of this came to Bremerton itself, but some went to the warehouse of the defendant in Seattle and was transported to Bremerton as needed.

It was conceded at the trial that all of the workmen and foremen employed by the defendant contractor on the project were paid at the rate of time and one-half for overtime work, with the exception of the claimants represented in this suit and two or three others who had not joined in the action. These claimants were paid at the rate of time and one-tenth for their overtime. This action is for the difference between those pay rates, for liquidated damages, costs and attorney's fees. Five of the original thirteen claims assigned to the appellants herein were settled before trial. As to the other eight

claims, the Court entered judgment of dismissal, from which this appeal is taken. The claimants represented here, with the undisputed amounts of overtime pay due them if all of their contentions are sustained, are as follows:

Cause of Action	Name	Classification	Amount
Second	A. W. Hall	Draftsman	\$380.63
Third	John W. Jameson	Timekeeper	875.69
Fourth	Ralph O. Lund	Draftsman	446.71
Fifth	Henry I. Mayer	Timekeeper	949.92
Sixth	Paul E. Mehner	Draftsman	462.84
Eleventh	Wm. J. Sheffield	Timekeeper	268.84
Twelfth	Glenn E. Tyler	Draftsman	521.26
Thirteenth	A. W. Torn	Draftsman	241.52

These amounts are exclusive of the liquidated damages, costs and attorney's fees claimed by the appellants.

These claimants, represented by appellants, were white-collar workers who did not, with two exceptions, actually have [43] anything to do with the reception of interstate shipments of materials. Those two exceptions were Mr. Henry I. Mayer and Mr. Wm. J. Sheffield, timekeepers who worked on the swing shift and who, because there was no material clerk on that shift during a part of that time, checked in, receipted for and oversaw the unloading of intra-state and inter-state shipments that arrived on the job during their hours of work. No evidence was introduced as to the amounts of such shipments, the claimants testifying that they handled a considerable number of them.

The other timekeeper, Mr. John W. Jameson, had no such direct contact with inter-state shipment of materials but based his claim upon having kept the

time of others who, as he supposed, were engaged in interstate commerce in building the pier and other facilities in and about Puget Sound.

The draftsmen's claim to being connected with inter-state shipments of materials was based on the following: They estimated the amounts of supplies to be ordered and submitted their estimates to the purchasing agent of the respondent company, who placed the order. After the supplies arrived and were in the warehouse, and before their installation, the draftsmen checked the various supplies as to quality and inspected the record as to such materials. All the draftsmen testified to having done such work. Although classified as draftsmen, they did inspection and field engineering work, under supervision of the Superintendent and Resident Engineer. As inspectors they had some direction over the installation of materials. As draftsmen they were supervised by Mr. A. W. Hall, who acted as chief draftsman and in a later period, not included in his own claim, as Assistant Superintendent.

Respondents contended that Mr. A. W. Hall fell under the exemption to the Fair Labor Standards Act, Title 29, Paragraph [44] 213 USCA, exempting from the provisions of the Act any employee engaged in a bona fide executive, administrative or professional capacity.

Respondents' witness, Mr. E. C. Jack, the Government's Resident Engineer on the project, testified from his records that Mr. Hall was employed at first merely as a draftsman and so worked from January 12, 1941 to April 8, 1941. Thereafter,



until May 1, 1942, he became head draftsman and his duties, according to Mr. Jack, became approximately 50% supervisory and 50% designing and drafting. There was no testimony that he was a graduate or professional engineer.

The question as to whether or not Mr. Hall was a bonafide executive, administrative or professional employee was not decided because the Court dismissed all the causes of action on the broader ground that none of the appellants was engaged in interstate commerce, the Court being of the opinion that the pier and its adjuncts were solely for the use of the United States Navy and hence never intended for commerce.

This Stipulation and Agreed Statement of Facts is dated at Seattle, Washington, September 27, 1945.

FLORENCE MAYNE

Attorney for Appellants

J. CHARLES DENNIS

Attorney for Respondents

[Endorsed]: Filed Sept. 27, 1945. [45]

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[Title of District Court and Cause.]

STIPULATION FOR ADDITIONAL TIME FOR  
FILING RECORD ON APPEAL

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, subject to approval of the Court, that the plaintiffs



above named, appellants on appeal, may have an additional fifteen days, a total of fifty-five days in all, from and after September 22, 1945, within which to transmit and docket the record on appeal to the Circuit Court of Appeals of the Ninth Circuit.

Dated at Seattle, Washington, September 17, 1945.

FLORENCE MAYNE

Attorney for Appellants

J. CHARLES DENNIS

Attorney for Respondents

[Endorsed]: Filed Sept. 18, 1945. [46]

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[Title of District Court and Cause.]

ORDER ALLOWING ADDITIONAL TIME FOR  
FILING RECORD ON APPEAL

It appearing that the parties have stipulated, through their respective counsel, subject to the approval of the above entitled Court, that the plaintiffs above named appellants on appeal, may have an additional fifteen days from and after September 22, 1945, within which to transmit and docket their record on appeal.

Now, Therefore, It Is Ordered that the plaintiffs above named, appellants on appeal, may have until the 8th day of October, 1945, to transmit the record on appeal in this cause and docket the same in the Circuit Court of Appeals of the Ninth Circuit.

Done in Open Court September 18, 1945.

JOHN C. BOWEN

Judge

Approved:

J. CHARLES DENNIS

U. S. Attorney

Presented by:

FLORENCE MAYNE

Attorney for Appellants

[Endorsed]: Filed Sept. 18, 1945. [47]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 47, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the final judgment of said United States District Court for

the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, to wit: [48]

Clerk's fees (Act of February 11, 1925) for making record, certificate or return	
108 folios at 15c.....	\$16.20
33 folios at 05c.....	1.65
Appeal fee (Sec. 5 of Act).....	5.00
Certificate of Clerk to Transcript of Record..	.50
<hr/>	
Total .....	\$23.35

I further certify that the above fees, in the sum of \$23.35, have been paid to me by the attorney for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 29 day of September, 1945.

[Seal]

MILLARD P. THOMAS,  
Clerk  
By PERCY MADDUX  
Deputy

[Endorsed]: No. 11150. United States Circuit Court of Appeals for the Ninth Circuit. Eugene E. Ritch and A. W. Hall, Appellants, vs. Puget Sound Bridge & Dredging Co., Inc., a Corporation, John A. Rumsey, a sole trader doing business as Rumsey & Co., together doing business as Rumsey Puget Sound, a Copartnership, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed October 4, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.